No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1954

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS.

UNITED STATES OF AMERICA, INTERVENER,

STATE OF NEVADA, INTERVENER.

ANSWER OF THE STATE OF NEVADA TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA

I

The State of Nevada admits the allegations contained in Paragraphs I to VIII, inclusive, of the Petition of Intervention of the United States.

II

Answering Paragraph IX of the petition of the United States, the State of Nevada admits the allegations contained therein; however, in connection with said admission, Nevada alleged in Paragraph VIII of its Petition of Intervention as follows: Article III(b) of said Compact provides that in addition to the apportionment of water in Article III(a) "the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one

million acre-feet per annum." No joint action by the Lower Basin States by negotiated Compact, Agreement, or by any other method has ever been initiated or taken to increase the beneficial consumptive use of said water within said basin by one million acre-feet or in any other amount whatsoever. The State of Nevada alleges that before any Lower Basin State can acquire the right to use said water, authoritative concerted action by the Lower Basin States must first be had giving the right to increase the beneficial consumptive use of water within said lower basin to the extent of an additional one million acre-feet of water as provided in said Article III(b), and that an equitable apportionment thereof to each of said States, by compact or agreement between such States, or by such other equitable action as will apportion said water is a necessary condition precedent. The State of Nevada further alleges that it is entitled to its equitable share in said water in addition to its equitable share of the water apportioned to the Lower Basin in Paragraph III(a). Nevada here reaffirms its position as alleged in said Paragraph.

III

The State of Nevada admits the allegations contained in Paragraphs X, XI, XII, XIII and XIV, of the Petition of the United States.

IV

Answering Paragraphs XV, XVI, and XVII of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained; however, in connection with said admission, Nevada alleges that the use of the waters of the Colorado River Stream System by the State of California is subject to and limited by the Colorado River Compact, the Project Act, and the Limitation Act to the quantities of water therein set forth, and that contracts between the United States of America and the various defendant contracting agencies are upon the express condition and with the express understanding that all rights under such contracts are subject to and governed by the Colorado River Compact, which Compact was approved in Section 13(c) of the Boulder Canyon Project Act.

V

Answering Paragraph XVIII of the Petition of the United States, the State of Nevada alleges that it is presently under a contract with the United States, dated January 3, 1944, amending a prior contract dated March 30, 1942, whereby the United States shall, from storage in Lake Mead, and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, deliver to the State each year not to exceed three hundred thousand (300,000) acre-feet of water, inclusive of all other waters diverted for use within the State from the Colorado River Stream System. That neither the said contract with the United States of June 30, 1942, nor the contract of January 3, 1944, contains any limitation whereby the right of the State of Nevada to contract for the delivery of additional water over and above three hundred thousand (300,000) acre-feet, and neither is said State by reason of said contracts prohibited from asserting claims to the right to use of the waters of the Colorado River Stream System over and above three hundred thousand (300,000) acre-feet of water.

VI

Answering Paragraph XIX of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained.

VII

Answering Paragraph XX of the Petition of the United States, the State of Nevada admits the allegations therein contained, but in connection with said admission, Nevada alleges that the Secretary of the Interior in the execution of said contracts providing annually eight million four hundred sixty-two thousand (8,462,000) acre-feet of water at Hoover Dam included therein the one million (1,000,000) acre-feet of water provided for in Article III(b) of the Colorado River Compact as and for an additional amount of water for beneficial consumptive use in the Lower Basin over and above the seven million five hundred thousand (7,500,000) acre-feet apportioned to the Lower Basin by Article III(a), without the necessity for such increase in the beneficial consumptive use of said III(b)

water being first shown and determined by all of the States in the Lower Basin by negotiated Compact, agreement or by any other method, whereby authoritative concerted action of said States increased such beneficial consumptive use in said Lower Basin and equitable apportionment thereof to each Lower Basin State being had in accordance with said Article III(b), and Nevada has so alleged in Paragraph VIII of its Petition of Intervention. Further, Nevada here refers to and adopts the allegations contained in Paragraph I, page 1, of its Reply to California's Answer to Nevada's Petition of Intervention.

VIII

Answering Paragraphs XXI, XXII, XXIII, XXIV, XXV, and XXVI, of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained.

IX

Answering Paragraph XXVII of the Petition of the United States, the State of Nevada admits the allegations therein contained, and in connection with said admission Nevada alleges that all the beneficial consumptive uses of the waters of the Colorado River Stream System by the Indians and Indian tribes under the United States as trustee or otherwise, is and shall be chargeable to the share thereof to which each State signatory of the Colorado River Compact is entitled; and Nevada further alleges that the appropriation and apportionment of said waters shall be had in strict accordance with the water law of appropriation of water for beneficial consumptive use in the particular State in which said use is had or contemplated, therefore, Nevada denies that the United States as trustee or otherwise is entitled to or obligated to annually divert as its water the acre-feet of water set forth in Appendix II, pages 56 and 57 of its Petition.

X

Answering Paragraph XXVIII of the Petition of the United States, the State of Nevada:

(a) Denies that any treaty to which the United States is a party authorizes it to make consumptive use of the water of the Colorado

River System for the support of fish or wildlife, and alleges that no treaty or federal statute has undertaken to authorize any officer of the United States so to do.

(b) Alleges that the United States, in Sections 8(a) and 13(b), (c), and (d) of the Boulder Canyon Project Act, subjected its rights and the rights of those claiming under it to the Colorado River Compact, and that these statutory provisions are applicable to uses for the benefit of fish and wildlife.

(c) Alleges that, pursuant to the provisions of Article IV of the Colorado River Compact, if any right exists to the consumptive use of water for the support of fish and wildlife, such right is subservient to the use and consumption of water for agricultural and domestic purposes and for the generation of electric energy, and that the rights of the State of Nevada are of these dominant categories.

(d) Alleges that if the United States has rights to the consumptive uses of water for the support of fish and wildlife, such uses are chargeable under the Colorado River Compact to the Basin and to the State in which such uses are situate, and, at least, to the extent that such rights existed on November 24, 1922, are chargeable under Article III(a) of the Compact.

XI

Answering Paragraph XXIX of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained.

XII

Answering Paragraph XXX of the Petition of the United States, the State of Nevada admits, denies and alleges with respect thereto as follows: Nevada admits that the United States alleges that it asserts claims against the parties to the Cause to the use of the waters of the Colorado River Stream System for the purposes of securing for its use, quantities of water to satisfy the maximum legal demands it is allegedly charged with and accountable for, but in connection with this said admission Nevada states that it has not sufficient knowledge or information upon which to base a belief and therefore denies all and singular the allegations therein contained, save and except,

(1) as its duty may arise in fulfilling its obligation to deliver to Mexico, water of said Stream System in accordance with the treaty provisions now existing between the United States and Mexico; (2) to fulfill its obligations in the delivery of water and power pursuant to valid contracts therefor; (3) as its obligations as trustee for the Indians and Indian Tribes with respect to the use of waters of the said Stream System may arise; however, such obligations as trustee for the use of such waters is to be exercised as set forth in Paragraph IX, ante this Answer; and (4) to exercise its lawful power with respect to flood control and navigation.

XIII

Answering Paragraph XXXI(a) of the Petition of the United States, the State of Nevada admits that the United States is a party to the treaties and international conventions alluded to in said paragraph, admits that the Colorado River Compact is a valid and binding covenant among all the States in the Colorado River Basin and alleges that its terms are also binding upon the United States and the Congress thereof. Nevada further admits that the Federal and State legislation mentioned in said paragraph are presumed to be valid enactments and enforceable, but that all of said acts are subject to interpretation and judicial determination. The State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies that each and every contract entered into by the United States of America involving the use and delivery of water or electric power pursuant to its aforesaid compacts and legislation, are valid, binding covenants constituting the measure of the rights of the parties thereto.

It appears that Paragraph XXXI(b) does not require an answer on the part of the State of Nevada.

XIV

Answering Paragraph XXXII-(1)-(2)-(3) of the Petition of the United States, the State of Nevada here refers to and adopts as if here set forth verbatim, each and every allegation therein contained

as set forth in Paragraph XVIII, pages 19 and 20, of Petition of Intervention of the State of Nevada relating to (1) Article III(b) water, (2) the measure of beneficial use of water, and (3) the measure and the charge of evaporation losses.

XV

Answering Paragraph XXXIII of the Petition of the United States, the State of Nevada admits that the questions propounded by the State of Arizona and the correlative injuries presented by the California defendants in their respective pleadings heretofore filed in this Cause and as now presented by the State of Nevada in its Petition of Intervention and in its Reply to the Answer of California defendants filed in this Cause, contain allegations and contentions of said parties and require the determination thereof by the Court. Nevada further alleges that the right to the use of the waters of the Colorado River Stream System sought by Nevada will not injure any right of the United States.

XVI

Answering Paragraph XXXIV of the Petition of the United States, the State of Nevada alleges that all of the rights of the United States involved in instant Cause, are subject to and controlled by the Colorado River Compact as particularly provided in Section 8 of the Boulder Canyon Project Act.

XVII

Answering Paragraph XXXV of the Petition of the United States, the State of Nevada admits that there is a conflict between the States of Arizona and California with respect to the validity and interpretation of the contracts therein mentioned with respect to the delivery of Colorado River water to the respective States, and in this connection Nevada alleges that in and by its Petition of Intervention and its Reply to the Answer of California filed herein, it makes claim to additional water of said river, which said claim is also in conflict with the claims of Arizona and California, all of which will

require interpretation by the Court. Nevada further alleges that it is and will be necessary for the Court to resolve the conflicts between the parties, including the United States, and determine the meaning and effect of the Colorado River Compact thereon.

XVIII

Answering Paragraph XXXVI of the Petition of the United States, the State of Nevada admits that there is a controversy between the States of Arizona and California with respect to the Colorado River Compact and the validity of the contract for the delivery of water between the United States and Arizona, the resolving of which will require the determination by the Court.

XIX

Answering Paragraph XXXVII of the Petition of the United States, the State of Nevada here refers to the allegations relating to the right to the use of the waters of the Colorado River Stream System by Indians and Indian tribes under the United States as trustee or otherwise, all as set forth in Paragraph IX, ante, this Answer.

WHEREFORE, The State of Nevada respectfully prays:

That the rights of the States of Arizona, California, Nevada, New Mexico, Utah and the United States of America in and to the use of the waters of the Colorado River Stream System be adjudicated, determined and forever set at rest.

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